

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 DENNIS WISE AND DEBORAH WISE,

3
4 Petitioners,

5 v.

6 CITY OF BATTLE GROUND,

7
8 Respondent.
9

Case No. 07-2-0031

FINAL DECISION AND ORDER

10
11 **I. SYNOPSIS OF THE DECISION**

12 Dennis and Deborah Wise challenge the City of Battle Ground's Ordinance 07-016 that
13 adopts a pre-annexation comprehensive plan and zoning designations for a portion of Battle
14 Ground's Urban Growth Area (UGA). Petitioners allege the City failed to preclude
15 incompatible uses adjacent to the Cedar North Airpark (Airpark) and failed to consult with
16 the Washington Department of Transportation's (WSDOT) Aviation Division and airport
17 owners before adopting this Ordinance. The Board finds that this action is not the seven-
18 year update of the City's comprehensive plan, therefore those portions of the City's
19 comprehensive plan not amended by this Ordinance are not subject to Board review.
20 Ordinance 07-016 does not affect land that is adjacent to the Airpark, so the Board has no
21 jurisdiction to review other parts of the plan that affected the Airpark. Because no land
22 adjacent to the Airpark was affected by the adoption of Ordinance 07-016, the City was not
23 obligated to consult with WSDOT, Aviation Division, or airport owners.
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27 **II. PROCEDURAL HISTORY**

28 The City of Battle Ground adopted Ordinance 07-016 on October 15, 2007. On December
29 21, 2007, Dennis and Deborah Wise filed a petition for review challenging that ordinance.
30 The Board issued a Preliminary Notice and Schedule on December 24, 2007 and held a
31 prehearing conference on January 16, 2008. On January 24, 2008, a prehearing order was
32 issued.

1 The City submitted its Index on January 23, 2008. On January 30, 2008, Petitioners sought
2 to add to the Index the publication "Airports and Compatible Land Use, Volume 1, authored
3 by WSDOT and an August 17, 2007 Letter for Kerri Woehler, WSDOT Aviation. On
4 February 13, 2008, the City objected to adding Airports and Compatible Land Use, Volume
5 1. On March 10, 2008, Petitioners moved to supplement the record with that publication.
6 The City objected to the motion to supplement on March 31, 2008. The Board granted the
7 motion to supplement on April 1, 2008. The publication was given Index # 51.
8

9
10 Petitioners submitted their Prehearing Brief on April 1, 2008. Respondent's Prehearing
11 Brief was submitted on April 22, 2008. On that date the City also filed a Motion to Admit
12 Supplemental Evidence with the following exhibits: Ordinance 07-016, Ordinance 04-020
13 and excerpts from the 2004-2024 Comprehensive Plan, and Chapter 17.25 Battle Ground
14 Municipal Code, Airparks.
15

16 Petitioners filed their response to the City's Prehearing Brief on April 25, 2008.
17

18 A hearing on the merits (HOM) was held at Battle Ground City Hall on May 6, 2008.
19 Michael Wynne represented Petitioners. City Attorney Brian Wolfe represented the City.
20 Community Development Director Brian Carrico also attended for the City. Board Members
21 Holly Gadbow and James McNamara attended, with Holly Gadbow presiding.
22

23 At the HOM, the City's Motion to Admit Supplemental Evidence was granted. The exhibits
24 were given the following Index #s: Ordinance 07-016 – Index # 52, Ordinance 04-020 and
25 excerpts for the 2004-2024 Battle Ground Comprehensive Plan – Index # 53, and Battle
26 Ground Municipal Code 17. 25 Airparks – Index # 54.
27

28
29 At the HOM, the Board also allowed the City to supplement the record with the following
30 two colored maps, plotted in 2004: a City of Battle Ground Comprehensive Plan Map,
31 assigned Index # 55 and City of Battle Ground Zoning Map, given Index # 55.
32

III. BURDEN OF PROOF

For the purposes of board review of the comprehensive plans and development regulations adopted by local government, the GMA establishes three major precepts: a presumption of validity; a “clearly erroneous” standard of review; and a requirement of deference to the decisions of local government.

Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and amendments to them are presumed valid upon adoption:

Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

RCW 36.70A.320(1).

The statute further provides that the standard of review is whether the challenged enactments are clearly erroneous:

The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.

RCW 36.70A.320(3)

In order to find the City’s action clearly erroneous, the Board must be “left with the firm and definite conviction that a mistake has been made.” *Department of Ecology v. PUD1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

Within the framework of state goals and requirements, the boards must grant deference to local governments in how they plan for growth:

In recognition of the broad range of discretion that may be exercised by counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter, the legislature intends for the boards to grant deference to the counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county’s or city’s future rests with that community.

RCW 36.70A.3201 (in part).

1 In challenging the sufficiency of compliance efforts as well as in an initial petition for review,
2 the burden is on Petitioners to overcome the presumption of validity and demonstrate that
3 any action taken by the City is clearly erroneous in light of the goals and requirements of
4 Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2). Where not clearly
5 erroneous, and thus within the framework of state goals and requirements, the planning
6 choices of local government must be granted deference.
7

8 **IV. ISSUES TO BE DISCUSSED**

- 9
- 10 1. Is the failure of the City to provide a mechanism to discourage the siting of
11 incompatible uses adjacent to Cedars North Airpark in its updated growth
12 management land use plan under Ordinance No. 07-016 a violation of RCW
13 36.70A.510 and RCW 36.70.547?
 - 14 2. Is the failure of the City in not seeking formal consultation with airport owners and the
15 Aviation Division of the Washington Department of Transportation in its adoption of
16 Ordinance No. 07-016 a violation of RCW 36.70A.510 and RCW 36.70.547?
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18 **V. DISCUSSION OF THE ISSUES**

19

20 ***Issue 1: Is the failure of the City to provide a mechanism to discourage the siting of***
21 ***incompatible uses adjacent to Cedars North Airpark in its updated growth***
22 ***management land use plan under Ordinance No. 07-016 a violation of RCW***
23 ***36.70A.510 and RCW 36.70.547?***

24 **Positions of the Parties**

25 Petitioners' Position

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27 Petitioners Dennis and Deborah Wise (Petitioners) argue that when the City of Battle
28 Ground adopted Ordinance 07-016 it did not include measures to discourage incompatible
29 uses around airports as required by RCW 36.70.547. Petitioners point out that this Board
30 has consistently interpreted RCW 36.70A.510 as requiring local governments to preclude
31 incompatible uses adjacent to airports. Petitioners assert that the Cedars North Airpark
32 (Airpark) qualifies as a general aviation airport, as it is operated for the benefit of the

1 general public, therefore, the City must preclude incompatible land uses adjacent to the
2 airport in all of its growth management plans.¹

3
4 Petitioners maintain that the City was reminded of this requirement by the Washington
5 Department of Transportation's (WSDOT), Aviation Division, in an August 17, 2007 letter
6 that specifically refers to the Airpark. Petitioners also claim that the City ignored WSDOT's
7 advice concerning compatible uses adjacent to airports, "Airports and Compatible Land
8 Use". Petitioners contend that the City should have at least considered these guidelines
9 and standards when developing or amending its comprehensive plan and development
10 regulations and precluded incompatible land uses adjacent to the Airpark.²

11
12 Petitioners declare that the Airpark at issue is an essential public facility (EPF) because
13 RCW 36.70A.200(1) classifies airports as EPFs and that this Board has consistently held
14 that airports are EPFs. Petitioners state that Ordinance 07-2-016 does not include a
15 process for identifying and siting EPFs. Citing *Achen v. Clark County*³, Petitioners reason
16 that this includes the duty to maintain current airport facilities. This duty encompasses
17 restricting incompatible uses, which usually include residential uses, according to
18 Petitioners.⁴

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21 Finally, Petitioners allege that the City adopted Ordinance 07-016 without consulting airport
22 owners and managers as required by RCW 36.70A.510. Petitioners base their argument on
23 lack of evidence in the record as evidence of a formal consultation taking place with owners
24 and airport managers. Further, Petitioners state that as of March 28, 2008, the County has
25 not filed either proposed or adopted Ordinance 07-016 with WSDOT's Aviation Division.
26 This does not constitute a reasonable period of time for filing the ordinance with WSDOT,
27 Petitioners contend.⁵

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31 ¹ Petitioners Pre-hearing Brief at 4 and 5.

32 ² *Ibid* at 5 and 6.

³ *Achen v. Clark County*, WWGMHB Case No. 95-2-0067 (Final Decision and Order, September 20, 2007).

⁴ Petitioners Prehearing Brief at 6.

⁵ *Ibid* at 6 and 7.

1 City's Position

2 The City of Battle Ground asserts that Section 2 of Ordinance 07-016 demonstrates that the
3 City did nothing in the adoption of this ordinance that affected the Airpark. The City says
4 that Ordinance 07-016 amended Ordinance 04-020 to accomplish three things: (1) revise
5 the City's land use map to reflect a changed urban growth boundary (UGB), (2) amend the
6 City's zoning map to include pre-annexation zoning for the expanded urban growth area
7 (UGA), and (3) amend Ordinance 04-2-020 to include the amended land use and zoning
8 maps. The City maintains that Ordinance 07-016 makes no mention of the Airpark and
9 places land that is more than a mile from the Airpark in the City's UGA.⁶

11
12 Citing *Hudson v. Clallam County*,⁷ the City avers that Petitioners' challenge is untimely
13 because this Board held that the GMA does not allow a party to use an amendment to the
14 GMA to challenge other parts of the comprehensive plan not affected by the amendment.
15 The Washington Appeals Court, in *Montlake Community Club v. Central Puget Sound*
16 *Hearings Board*⁸ upheld this principle, the City asserts.⁹ The City argues that Petitioners
17 should have challenged Ordinance 04-2-020.¹⁰ At argument the City explained that
18 Ordinance 04-020 was the City's required update required by RCW 36.70A.130(1) and (4)
19 and also adopted changes to the comprehensive plan and zoning changes affecting the
20 airport. The City contends that because Ordinance 07-016 did not consider Petitioners'
21 property or the Cedars Park Airpark, no consultation was necessary. Further, the City
22 asserts that no evidence exists that consultation did not occur prior to the 2004 update.¹¹
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29 ⁶ Respondent City of Battle Ground's Prehearing Brief at 2.

30 ⁷ *Hudson v. Clallam County (Hudson)*, WWGMHB Case No. 96-2-0031(Motions Order, March 21, 1997).

31 ⁸ *Montlake Community Club v. Central Puget Sound Growth Management Hearings Board*, 110 WA App.731, P
3d 57 (2002).

32 ⁹ Respondent City of Battle Ground Prehearing Brief at 3 and 4.

¹⁰ *Ibid.*

¹¹ *Ibid.*

1 If the Board does not find that Petitioners' challenge is untimely, the City asserts that its
2 comprehensive plan and development regulations preclude incompatible uses adjacent to
3 the Airpark.¹²
4

5 **Board Discussion**

6 **Petition's Timeliness**

7 The Board must first decide whether Petitioner's challenge to the City's ordinance, as it
8 relates to failure to preclude incompatible uses adjacent to the Airpark, is timely to
9 determine whether the Board has jurisdiction over these issues. The City asserts that
10 Petitioners' challenge is untimely for several reasons. First, if Petitioners were going to
11 challenge the lack of adequate development regulations to protect the Airpark, the
12 challenge should have been to Ordinance 04-020, which was the City's required update
13 pursuant to RCW 36.70A.130(1)(a). Secondly, Ordinance 04-020 was the action that
14 adopted comprehensive plan designations and zoning map designations for the area
15 around the Airpark. Third, Ordinance 07-016 only amends the comprehensive plan and
16 zoning map to reflect changes made in 2007 to Battle Ground's UGB and adopted pre-
17 annexation comprehensive map and zoning designations for that UGA, in an area that is
18 more than a mile from the Airpark.
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22 In contrast, Petitioners claim that District II of Washington Appeals Court in *Thurston*
23 *County v. Western Washington Growth Management Hearings Board (Thurston County)*¹³
24 held that the Growth Management Hearings Board could consider portions of the County's
25 comprehensive plan that were not revised if petitioners filed within 60 days of revision.
26 Petitioners say that the Appeals Court found that this interpretation would undermine the
27 purpose of requiring periodic reviews and allowed the Board to review unchanged portions
28 of the County's comprehensive plan.¹⁴ Petitioners say that *Thurston County* was affirmed
29 by District I of the Washington Appeals Court, in *Goldstar Resorts v. Futurewise (Goldstar)*,
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31

32 ¹² *Ibid.*

¹³ *Thurston County v. Western Washington Growth Management Hearings Board*, 137 Wash. App.781(2007).

¹⁴ Petitioners Response to Respondents Prehearing Brief at 2.

1 when it held that upon amendment, the entire comprehensive plan could be reviewed by the
2 Board, including provisions that had not been amended.

3
4 Petitioners misconstrue both *Thurston County* and *Goldstar*. Both these cases dealt with
5 issues that were part of the review and revision of comprehensive plans and development
6 regulations required by RCW 36.70A.130(1) and (4), often referred to as the seven-year
7 update process or periodic review. In *Thurston County*, District II of the Court of Appeals
8 upheld this Board's decision that the Boards could determine compliance with the GMA of
9 any comprehensive plan policies or development regulations that were challenged in the
10 seven-year update process.¹⁵ In *Goldstar*, District I of the Court of Appeals rejected the
11 contention that all aspects of Whatcom County's comprehensive plan were subject to
12 challenge and instead held that only parts of a city or county's comprehensive plan or
13 development regulations that were affected by a change in law since in the County's
14 comprehensive plan was adopted could be challenged.¹⁶
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17
18 Therefore, based on these Appeals Courts' decisions, in order for the Board to be able to
19 review a challenge that the City failed to review and revise its comprehensive plan policies
20 and development regulations, the challenged ordinance must be the seven-year update of
21 the City's comprehensive plan according to *Thurston* and *Goldstar*. The City's first
22 comprehensive plan was adopted in 1995 and RCW 36.70A.510 requiring the counties and
23 cities to discourage the siting of incompatible uses near general aviation airports was
24 adopted in 1996. Therefore, if Ordinance 07-016 is the seven-year update required by
25 RCW 36.70A.130(1), then according to either *Thurston County* or *Goldstar*, a challenge to
26 the adequacy of comprehensive plan policies and development regulations to discourage
27 incompatible uses around the Airport is reviewable by the Board. If the Ordinance 07-016
28 is not an update required by RCW 36.70A.130(1) and (4), the actual comprehensive plan
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32 ¹⁵ *Thurston County v. Western Washington Growth Management Hearings Board*, 137 Wn.App 781, 154 P.3d 959 (2007) at 793.

¹⁶ *Goldstar Resorts v. Futurewise*, 140 Wn.App.378, 166 P 3d 748(2007) at 389-90.

1 policies and development regulations need to affect the Airpark to be reviewable by the
2 Board.

3
4 At argument, the City insisted that Ordinance 07-016 was not the City's seven-year update
5 required by RCW 36.70A.130(1), but an annual amendment to its comprehensive plan.

6 Rather, the City says that it accomplished its seven-year update requirement with the
7 adoption of Ordinance 04-020.

8
9 RCW 36.70A.130 sets out requirements for two kinds of amendment processes. This
10 Board's decision in *1000 Friends and Pro Whatcom v. Whatcom (Pro Whatcom)*¹⁷ explains
11 this:

12
13 This provision of the GMA (RCW 36.70.130) contains two major kinds of revision
14 requirements for comprehensive plans and development regulations. First,
15 comprehensive plans and development regulations adopted pursuant to Ch. 36.70A
16 RCW are subject to "continuing review and evaluation".

17 While there is no express requirement that this be done every year, this type of
18 review is usually done in an annual comprehensive amendment cycle, RCW
19 36.70A.130(2)(a). The amendments adopted under this process may be appealed to
20 the boards to determine whether the adopted amendments comply with the GMA; but
21 these types of amendments are not required to ensure that the local jurisdiction's
22 entire comprehensive plan and development regulations comply with all the
23 provisions of the GMA.

24 "Updates", on the other hand, require a review and revision, if needed, of both the
25 comprehensive plan and the development regulations to ensure their compliance
26 with the GMA, according to a staggered schedule set out in RCW 36.70A.130(4):
27 "Updates" means to review and revise, if needed, according to subsection (1) of this
28 section, and the time periods specified in subsection (4) of this section...

29
30 An update requires that counties and cities review and revise, as needed, their plans
31 and regulations, to ensure compliance with the GMA. RCW 36.70A.130(1)(a) and
32 (2)(a) (in part). ...¹⁸

¹⁷ *1000 Friends and ProWhatcom v. Whatcom County*, WWGMHB Case No.04-2-0010 (Order on Motion to Dismiss, August 2, 2004).

¹⁸ *Ibid* at 8.

1 The Board also went on to explain the type of action that a city or county needs to take to
2 ensure that the update required by RCW 36.70A.130(1) and (4) is completed:

3 The statute specifies that a local jurisdiction must take “legislative action” in adopting
4 its update. RCW 36.70A.130(1)(a). Legislative action is defined as “the adoption of a
5 resolution or ordinance following notice and a public hearing indicating *at a minimum*,
6 a finding that a review and evaluation has occurred and identifying the revisions
7 made, or that a revision was not needed and the reasons therefore.” RCW
8 36.70A.130(1)(a)(emphasis added).¹⁹

9 The City first claims that Ordinance 04-020 adopted its update required by RCW
10 36.70A.130(1) and (4). Ordinance 04-020 does not provide conclusive evidence that this
11 was the City’s required update. The title of Ordinance 04-020 says is related to “adopting a
12 revised comprehensive land use plan” and “Section 2 of the Ordinance states:

13 Comprehensive Plan Adoption. The City of Battle Ground, Washington
14 Comprehensive Plan 2004-2024, dated September 2004, is hereby adopted as the
15 comprehensive land use plan for the City of Battle Ground including facility plans
16 referenced therein.²⁰

17 However, the Ordinance 04-020 does not include a statement confirming that review and
18 evaluation has occurred or if any revisions were necessary or not needed. This Ordinance
19 also does not make any reference to any review of development regulations.
20

21 The City next argues that Ordinance 04-020 adopted the pre-annexation comprehensive
22 plan designations and zoning maps for the areas adjacent to the Airpark. The City
23 presented colored maps at the hearing on the merits dated 2004 that showed the
24 comprehensive plan and zoning designations adjacent to the Airpark. No language in
25 Ordinance 04-020 specifically adopts either of these maps, although the comprehensive
26 plan adopted by this Ordinance says:
27

28 Figure 3-1 is the Comprehensive Plan Map, which officially designates the types and
29 intensities of land uses allowed throughout the city of Battle Ground. Designations
30 applied to Clark County in the unincorporated UGA are also indicated. Designations
31 within the future UGA depict the City’s plans to achieve its vision as these lands are
32

¹⁹ *Ibid.*

²⁰ Index # 53, Ordinance 04-020 at 5.

1 brought within the Battle Ground UGA in the future. The areas designated in this
2 "Future Urban Growth Area" are intended to be illustrative, and have not been
3 adopted by Clark County....²¹

4 Figure 1 is a black and white map and land use designations cannot be clearly seen. At the
5 hearing, the City presented a colored version of the land use and zoning maps showing the
6 designations and zoning around the airport. No ordinance adopting the zoning map was
7 included. Based on the City's statement that the colored comprehensive plan and zoning
8 maps are the City's proposed land use designations for its unincorporated UGA adopted by
9 Ordinance 04-020, the time for consultation with WSDOT Aviation and airport owners would
10 have been prior to 04-020, or when the City imposed its own zoning. However, 04-020
11 was adopted on December 6, 2004. RCW 36.70A.290 requires petitions for review to be
12 filed 60 days from publication of this ordinance. While no publication date for the
13 Ordinance was provided to the Board, we assume that 60 days from publication of
14 Ordinance 04-020 has passed.
15

16
17 The City's third argument is Ordinance 07-016 instituted no action that affected the Airpark.
18 The title of the Ordinance calls the action "Adopting an Updated Growth Management
19 Plan"²². The City says that this update is an annual amendment to its plan pursuant to
20 RCW 36.70A.130(2)(a), and not the "update" required by RCW 36.70A.130(1)(a). No
21 language in the ordinance indicates that this Ordinance is the update required by RCW
22 36.70A.130(1)(a) and (4)(b). This Ordinance's purposes included a statement that the
23 reason that the City is updating its plan is to maintain consistency with the County's adopted
24 UGBs adopted in September 2007.²³ Section 2 of Ordinance 07-16 states that this action
25 amends the comprehensive plan adopted by Ordinance 04-020 to (1) include the revised
26 UGB and land use designations for the expanded area shown in Exhibit 1, (2) include the
27 City of Battle Ground's zoning map to include the pre-annexation zoning for the UGB
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32 ²¹ Index # 53, Battle Ground 2004-2024 Comprehensive Plan, Land Use, 3.4.1 at 27

²² Ordinance 07-013 at 1.

²³ *Ibid.*

1 indicated by Exhibit 2, and (3) revises the City of Battle Ground Comprehensive Plan 2004-
2 2024 attached as Exhibit 3.^{24 25}

3
4 Based on the language in Ordinance 07-016, the Board concludes that Ordinance 07-016 is
5 not an “update” required by RCW 36.70A.130(1) and (4), and is an amendment to the City’s
6 plan adopted pursuant to RCW 36.70A.130(2)(a). While this type of amendment is subject
7 to Board review for compliance of the amendment with the GMA, this type of amendment
8 is not required to ensure that the local jurisdiction’s entire comprehensive plan and
9 development regulations comply with all the provisions of the GMA. This is the type of
10 amendment which this Board said did not open up the entire plan to review in *Hudson and*
11 *ProWhatcom*.
12

13
14 Having established that the entire comprehensive plan and zoning regulations are not
15 subject to review at this time, the Board will determine whether Ordinance 07-016 adopted
16 comprehensive plan or zoning amendments for land adjacent to the Airpark. Exhibit 1,
17 attached to Ordinance 07-016 the City’s land use map depicts the new pre-annexation land
18 use designations for the expanded Battle Ground UGB and Exhibit 2, attached to Ordinance
19 07-016 shows the City’s pre-annexation zoning designations for the same area. A
20 comparison of these maps attached to Ordinance 07-016 and the maps that the City says
21 were the comprehensive plan map and zoning maps adopted by Ordinance 04-020 shows
22 that this area of the UGB affected by Ordinance 07-016 is not adjacent to the Airpark. The
23 map plotted in 2004 shows that the Airpark is bordered in part by 194th and 157th just
24 outside the southeastern City limits.²⁶ The area where pre-annexation comprehensive plan
25 and zoning designations are applied by Ordinance 07-016 is on the west and south of the
26 City limits and not at all adjacent to the Airpark.²⁷
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32 ²⁴ Exhibit 3 is the revised 2004-2024 Battle Ground, Washington Comprehensive Plan.

²⁵ Ordinance 07-016 at 2 and 3.

²⁶ Index #s 54 and 55.

²⁷ Exhibit 1 and 2 of Ordinance 07-016.

1 **Conclusion:** Ordinance 07-016 does not adopt an “update” of the City’s comprehensive
2 plan and zoning regulations as required by RCW 36.70A.130(1) and (4), but instead is an
3 amendment to the City’s comprehensive plan described in RCW 36.70A.130(2)(a). The
4 adoption of Ordinance 07-016 does not open the entire City of Battle Ground’s 2004- 2024
5 comprehensive plan or its development regulations for review. Ordinance 07-016 adopts
6 pre-annexation comprehensive plan and zoning designations for an area within Battle
7 Ground’s urban growth boundary that is not adjacent to the airport. The Board lacks
8 jurisdiction over challenges to unchanged provisions of the comprehensive plan, specifically
9 the land use and zoning designations around the Airpark shown on Exhibits 51 and 52
10 pursuant to RCW 36.70A.130(1)(a) and (2)(a) and RCW 36.70A.290.
11
12

13 **Issue 2: Is the failure of the City in not seeking formal consultation with airport**
14 **owners and the Aviation Division of the Washington Department of Transportation in**
15 **its adoption of Ordinance No. 07-016 a violation of RCW 36.70A.510 and RCW**
16 **36.70.547?**

17 **Positions of the Parties**

18 Petitioners contend that the City should have consulted with WSDOT, Aviation Division and
19 airport owners adjacent to the Airpark before adopting Ordinance 07-016. The City says
20 because the land that received pre-annexation land use and zoning designations was not
21 adjacent to the airport, it did not have to consult with WSDOT and airport owners.
22
23

24 **Board Discussion**

25 RCW 36.70A.510, the part of the GMA, that speaks to the adoption of comprehensive plans
26 and development regulations affecting land adjacent to airports requires:

27 Adoption and amendment of comprehensive plan provisions and development
28 regulations under this chapter affecting a general aviation airport are subject to RCW
29 36.70.547.

30 RCW 36.70.547 states,

31 Every county, city, and town in which there is located a general aviation airport that is
32 operated for the benefit of the general public, whether publicly owned or privately
owned public use, shall, through its comprehensive plan and development

1 regulations, discourage the siting of incompatible uses adjacent to such general
2 aviation airport. Such plans and regulations may only be adopted or amended after
3 formal consultation with: Airport owners and managers, private airport operators,
4 general aviation pilots, ports, and the aviation division of the department of
5 transportation. All proposed and adopted plans and regulations shall be filed with the
6 aviation division of the department of transportation within a reasonable time after
7 release for public consideration and comment. Each county, city, and town may
8 obtain technical assistance from the aviation division of the department of
9 transportation to develop plans and regulations consistent with this section.

10 Any additions or amendments to comprehensive plans or development regulations
11 required by this section may be adopted during the normal course of land-use
12 proceedings.

13 This section applies to every county, city, and town, whether operating under chapter
14 35.63, 35A.63, 36.70, [or] 36.70A RCW, or under a charter.

15 RCW 36.70A.510 requires that the adoption of comprehensive plans and development
16 regulations affecting airports are subject to RCW 36.70A.547. RCW 36.70A.547 requires
17 consultation with WSDOT, Aviation Division, and airport owners and managers, private
18 airport operations, general aviation pilots, and ports. RCW 36.70A.510 requires this of both
19 comprehensive plans and development regulations and amendments to either of these
20 actions. The pertinent part of RCW 36.70A.510 are the words "affecting general aviation
21 airports". In the section above, the Board concluded that the amendments made by
22 Ordinance 07-016 did not affect the Airpark. Therefore, the requirements of RCW
23 36.70.547 do not apply.

24
25 **Conclusion:** Because Ordinance 07-016 did not affect the Airpark, the failure to consult
26 with WSDOT, Aviation Division and airport owners prior to its adoption does not violate
27 RCW 36.70A.510.

28 29 VI. FINDINGS OF FACT

- 30 1. Battle Ground is a city in Clark County, a county located west of the crest of the
31 Cascade Mountains, and is required to plan according to RCW 36.70A.040.
32 2. The City of Battle Ground adopted Ordinance 07-016 on October 15, 2007.

- 1 3. Petitioners Dennis and Deborah Wise filed a petition for review challenging
2 Ordinance 07-016.
- 3 4. Petitioners state they have standing through testifying before the City numerous
4 times. The City does not challenge Petitioners' standing to challenge Ordinance 07-
5 016.
- 6 5. Ordinance 04-020 adopted a revised 2004-2024 City of Battle Ground
7 Comprehensive Plan on December 6, 2004.
- 8 6. The City presented colored maps plotted in 2004 at the hearing on the merits
9 showing the comprehensive plan and zoning designations adjacent to the Airpark.
- 10 7. Ordinance 07-016's purposes include a statement that the reason that the City is
11 updating its plan is to maintain consistency with the County's adopted UGBs adopted
12 in September 2007.
- 13 8. Section 2 of Ordinance 07-016 states that this action amends the comprehensive plan
14 adopted by Ordinance 04-020 to (1) include the revised UGB and land use
15 designations for the expanded area shown in Exhibit 1, (2) include the City of Battle
16 Ground's zoning map to include the pre-annexation zoning for the UGB indicated by
17 Exhibit 2, and (3) revises the City of Battle Ground Comprehensive Plan 2004-2024
18 attached as Exhibit 3.
- 19 9. A comparison of these maps attached to Ordinance 07-016 and the maps that the City
20 says were the comprehensive plan map and zoning map adopted by Ordinance 04-
21 020 shows that the area of the UGA affected by Ordinance 07-016 is not adjacent to
22 the Airpark.
- 23 10. The map plotted in 2004 shows that the Airpark is bordered in part by 194th and
24 157th just outside the southeastern City limits. The area where pre-annexation
25 comprehensive plan and zoning designations applied by Ordinance 07-016 is on the
26 west and south of the City limits and not at all adjacent to the Airpark.
- 27 11. Any Finding of Fact hereafter determined to be a Conclusion of Law is adopted as
28 such.
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VII. CONCLUSIONS OF LAW

- A. The Board has jurisdiction over the parties in this case.
- B. Petitioners have standing to challenge Ordinance 07-016.
- C. Ordinance 07-016 does not adopt an “update” of the City’s comprehensive plan and zoning regulations as required by RCW 36.70A.130(1) and (4), but is instead an amendment to the City’s comprehensive plan described in RCW 36.70A.130(2)(a).
- D. The adoption of Ordinance 07-016 does not open the entire Battle Ground 2004-2024 comprehensive plan or its development regulations for review pursuant to RCW 36.70A.130(1) and RCW 36.70A.130 (2)(a).
- E. The Board lacks jurisdiction over challenges to unchanged provisions of the Battle Ground 2004- 2024 comprehensive plan, specifically the land use and zoning designations around the Airpark shown on Exhibits 51 and 52 pursuant to RCW 36.70A.130 (1)(a) and (2)(a) and RCW 36.70A.290(2).
- F. Because Ordinance 07-016 did not affect the Airpark, the failure to consult with WSDOT, Aviation Division and airport owners prior to its adoption does not violate RCW 36.70A.510.
- G. Any Conclusion of Law hereafter determined to be a Finding of Fact is adopted as such.

VIII. ORDER

Because Ordinance 07-016 is an amendment to the City’s comprehensive plan pursuant to RCW 36.70A.130(2)(a), parts of the City’s comprehensive plan not affected by Ordinance 07-016 are not subject to Board review. Ordinance 07-016 does not affect land adjacent to Cedars North Airpark, therefore, the City did not violate RCW 36.70A.570. Having found no clearly erroneous violations of the GMA regarding Ordinance 070-16, this case is hereby CLOSED.

ENTERED this 18th day of June 2008.

Holly Gadbow, Board Member

James McNamara, Board Member

(Board Member William Roehl was not a member of the Board at the time of the Hearing on the Merits and therefore did not take part in this Final Decision and Order.)

Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The original and three copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. **Filing means actual receipt of the document at the Board office.** RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person, by fax or by mail, but service on the Board means **actual receipt of the document at the Board office** within thirty days after service of the final order.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

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